

conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between parties, in the public service ~~or~~ ~~in private employment.~~

(e) Each party shall notify the fact finder and the other party to the dispute whether it accepts the fact finder's recommendations, in whole or in part, within ten (10) days after the issuance of such recommendations. If neither party rejects the recommendations, such recommendations shall be deemed to be a final resolution of the matters in dispute. If either party rejects all or part of the fact finder's recommendations, it shall include in its notification its specific reasons for rejection in writing. A rejecting party shall, within two (2) days after notifying the fact finder of its rejection, publish its position and reasons for rejection in the local media, along with the fact finder's findings of fact and recommendations for resolution of the dispute. The rejecting party shall bear the expense of such publication. If both parties reject the fact finder's recommendations in whole or in part, the findings of fact and recommendations need only be published once and the expense of such publication shall be equally shared by the parties. If a party accepts the fact finder's recommendations, it may make its position statement public at its own expense.

(f) The terms and conditions of any expiring collective bargaining agreement between the parties shall remain in place following expiration of such agreement, unless otherwise mutually agreed in writing by the parties, until the effective date of a successor agreement between the parties, or the publication of the fact finder's findings of fact and recommendations, whichever is earlier.

(g) (1) If MERC fails, within ten (10) days after an application under subparagraph (a), to agree to institute fact finding, pursuant to this paragraph, either parties may request the appointment of a neutral fact finder. Upon such request, the Recipient and the Union shall immediately meet and attempt to agree upon an acceptable neutral fact finder. If the parties are unable to agree on a neutral fact finder within ten (10) days after the request for fact finding, either party may request the Federal Mediation and Conciliation Service to furnish a list of five (5) persons from which the neutral fact finder shall be selected. The parties shall, within (5) days after receipt of such list, determine by lot the order of elimination, and thereafter each shall, in that order ALTERNATELY eliminate one name until only one name remains. The remaining person on the list shall be the neutral fact finder. The neutral fact finder shall proceed to carry out the fact finding process in accordance with subparagraphs (c) through (f) of this paragraph (18).

(2) The salary and expenses of the neutral fact finder selected under this subparagraph shall be borne equally by the parties to the proceedings, and all other expenses shall be borne by the party incurring them.

(h) Nothing in this paragraph (18) shall be interpreted or construed as modifying or limiting any right or obligation of either the Recipient or the Union under Michigan law.

(19) Nothing in this Agreement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by

collective bargaining agreement or law where applicable, including P.L. 93-236, enacted January 2, 1974; provided, that there shall be no duplication or pyramiding of benefits to any employee, and, provided further, that the benefits under this Agreement, ~~or any other arrangement~~, shall be construed to include the conditions, responsibilities, and obligations accompanying such benefits. This paragraph is intended to be construed consistent with the Hodgson Affidavit in Civil Action No. 825-71 and the federal court's interpretation of the concept of "pyramiding" in New York Dock Railway v. U.S., 609 F.2d 83, 99-101 (2d Cir. 1979).

(20) (a) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through the employee's union representative with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee's position with respect to the employee's employment is otherwise worsened as a result of the Project; provided, in the latter case, if the event giving rise to the claim have occurred over an extended peirod, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within such time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to such claims.

(b) The Recipient will fully honor a claim filed under the paragraph (20), making appropriate payments, or will give notice to the claimant and the employee's representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual material as may be relevant. As soon as practical thereafter, the parties shall meet and attempt to agree upon the proper disposition of the claim. If no agreement is reached, and the Recipient decides to reject the claim, it shall give written notice of its rejection of the claim, detailing its reasons therefor. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as hereinabove provided by paragraph (17). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information which is relevant to the disposition of the claim.

(c) Nothing included herein as an obligation of the Recipient shall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (13) hereof, nor make any such employer a third-party beneficiary of the Recipient's or Union's obligations contained herein, nor deprive the Recipient or Union of any right of subrogation.

(21) During the employee's protective period, an employee dismissed as a result of the Project shall, if the employee so requests in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient or the employee's former employer reasonably comparable to that which the employee held when dismissed, for which the employee is, or by training or retraining within a reasonable period of time can become, qualified; not, however, in contravention of collective bargaining agreements relating thereto. In the event such employee requests such training or retraining to fill such vacant position, the Recipient shall provide for such training or retraining at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any additional sum that may be required in order to equal the amount of the displacement allowance to which the employee would have otherwise been entitled if the employee had, at the time of the employee's dismissal, been placed in such position and not dismissed. If such dismissed employee who has

made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee is qualified, or for which the employee has satisfactorily completed such training, the employee shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this Agreement.

As between employees who request employment pursuant to this paragraph, the following order shall prevail where applicable in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class as shown on the appropriate seniority roster, shall prevail over junior employees.

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(22) If any employer shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which the employee would be entitled under this Agreement as an employee affected by the Project, the provisions of this Agreement shall apply to such employee as of the date when the employee was so affected.

(23) This Agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management, or operation of the system, shall agree to be bound by the terms of this Agreement and accept the responsibility for full performance of these conditions.

(24) The employees covered by this Agreement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Worker's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(25) In the event any provision of this Agreement is held to be invalid, or otherwise unenforceable under the Federal, state or local law, in the context of a particular Project, the remaining provisions of this Agreement shall not be affected and the invalid, or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under Section 13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project which shall be incorporated in this Agreement only as applied to that Project, and any other appropriate action, remedy or relief.

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(26) Other Unions shall be afforded the opportunity to become a party to this Agreement by serving written notice to do so, within fifteen (15) days following the execution hereof, upon the Union and the Recipient. In the context of a particular Project, any other union which is the collective bargaining representative of urban mass transportation employees in the service area of the Recipient and who may be affected by the Project, may become a party to this Agreement as applied to the Project, by serving written notice of its desire to do so upon the other union representatives of the employees affected by the Project, the Recipient and the Secretary of Labor. In the event of any disagreement that such labor organization should become a party to this Agreement, as applied to the Project, then the dispute as to whether such labor organization shall participate shall be determined by the Secretary of Labor.

(27) Employees covered by this Agreement will be given the first opportunity for employment in any new fixed rail guideway system jobs included in the bargaining unit or comparable to those included in the bargaining unit, created as a result of the Project for which they are, or by training or re-training can become, qualified. All such jobs shall be filled in accordance with seniority and allocated on a fair and equitable basis under arrangements to be mutually determined by the Recipient and other operator of the transit system, and the Union prior to the filling of such jobs, or by arbitration at the request of either party, if such arrangements are not agreed upon prior to such date. The Recipient and other operator of the transit system will not tender such jobs to any other individual or



individuals so long as there are members of the bargaining unit who are qualified, or after a reasonable training period can become qualified, and are willing to bid these jobs.

The Recipient or other operator of the transit system will give written notice to the Union prior to commencing any new operations which create additional jobs, and the parties shall thereafter meet at mutually agreeable times to negotiate concerning the details of a preferential employment opportunity plan and the wages, hours, and working conditions for employees assigned to such new operations. Any agreement reached upon such provisions shall be executed by all parties and made a part of this Agreement. In the event the parties are unable to agree upon such provisions, the dispute may be submitted to interest dispute resolution in accordance with this Agreement.

(28) In the event any Project to which this Agreement applies is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the Federal government and the Recipient or other applicant for Federal funds; provided, however, that this Agreement shall not merge into the contract of assistance but shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms, nor shall any other employee protective agreement or arrangement nor any collective bargaining agreement merge into this Agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.